IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 977/2002
(Amit Kumar and Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 23/11/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. P.C.Solanki & Mr. Manish Dadhich for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. S.S.Dhillon for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter) the petitioners seek quashing of FIR No. 55 dated 25.9.2002, Police Station, Mahila Thana, Bikaner for the offences under Sections 498-A, 406 and 120-B IPC.

I have heard learned counsel for the petitioners, public prosecutor for the State and the counsel appearing for the non-petitioner No.2. Carefully gone through the contents of the FIR in question.

It is contended by learned counsel for the petitioners that the non-petitioner No.2 (for short 'the complainant' hereinafter) earlier lodged an FIR being FIR No.5 dated

15.2.2001 Police Station, Mahila Thana, Bikaner on the same facts and for the same offences for which the present FIR has been lodged against the petitioners and in the earlier FIR, after investigation, the police filed negative final report and therefore, the present FIR on same set of facts is not maintainable and deserves to be quashed. It is further contended that even from the averments made in the FIR in question, no offence under Sections 498-A, 406 and 120-B IPC against the present petitioner No.1 Amit Kumar who has been residing in United States of America (for short 'the America) is made out. Even otherwise, if the complainant was subjected to cruelty by the petitioner No.1 while living with complainant at America, then the Court at Bikaner in India has no jurisdiction. Counsel for the petitioners has relied on a decision of Hon'ble Supreme Court in Rishi Anand and Another Vs. Govt. of NCT of Delhi and others 2002 SCC (Cri) 725. It is further contended by learned counsel for the petitioners that so far as offence under Section 406 IPC is concerned, there is no averment in the complaint that any property of the complainant was entrusted to the petitioner No.1 Amit Kumar and No.4 Namit Kumar. It is further contended by learned counsel for the petitioners that the complainant alleged in the FIR that on 15.6.2002 she was subjected to cruelty and turned out from the matrimonial home by petitioners No. 2, 3 and 4, whereas on 15.6.2002, the petitioner No.4 appeared in

the Examination held by J.T. Mahajan Abhiyantrik Vidhyalaya, Jalgaon, Maharashtra.

Learned counsel appearing for the complainant supported the FIR and contended that in the first FIR though the similar allegations were made, but the petitioner No.1 as also the petitioners NO. 2 and 3 assured the complainant that she would be taken by her husband along with him to America and therefore, in order to settle the matrimonial home and to lead a peaceful matrimonial life, she compromised the matter, and on the basis of the compromise, the police filed negative final report. It was not the case that the police did not find case on the earlier FIR lodged by the complainant. On careful perusal of the FIR in question, it appears that on 18.10.1996 the marriage of the complainant with the petitioner No.1 Amit Kumar was solemnized according to Hindu rites at Bikaner and thereafter the marriage was registered with the Registrar of Marriages, Bikaner. After the marriage, the complainant went to Pilani along with her husband where the complainant's in-laws have been residing. It is stated in the complaint that at the time of marriage the parents of the complainant gave certain ornaments, household articles, Maruti-800 Car, clothes etc. as dowry articles, detail of which has been mentioned in the FIR. In para 5 of the complaint it has been stated that after some times she went to America with her husband petitioner No.1 and

entrusted her dowry articles to the petitioners No. 2 and 3 who are father-in-law and mother-in-law respectively. At America, it is alleged that for some time, she was well maintained by her husband, however, later, he started making unlawful demands and raised grievance of non-payment of Air tickets by the parents of the complainant. In August 1998, the marriage of the complainant's brother was settled and on invitation received from her parents, her husband petitioner No.1 insisted that in order to attend the marriage of her brother, the parents of the complainant required to arrange the Air tickets, for that the parents of the complainant gave Rs. 1,50,000/- to her in-laws namely petitioner No.2 and 3. However, on 18.7.1998 the petitioner No.1 sent the complainant and her son to India and declined to attend the marriage and therefore, did not accompany her. On arrival at her parents' house, she disclosed that she has been subjected to cruelty by petitioner No.1 as also the other petitioners. Apprehending her life, she informed her parents that her going to in-laws house is unsafe. However, with the persuasion of the reputed persons of the community, she was sent to her in-laws house along with certain items on the occasion of Chuchak (a ceremony after giving birth to a child), details of such items have been mentioned in the FIR. The petitioners No. 2 and 3 parents-in-law were not satisfied with the articles given at the ceremony of Chuchak and therefore, she

was subjected to cruelty and harassment on account of non-fulfillment of the demand. She came over to her parental house at Bikaner along with her son. However, she was sent back to America with her husband to live with her husband, on which, her husband got annoyed and threatened to divorce her. She was maltreated at America and in February 1999 the petitioner No.1 along with the complainant came to India on account of marriage of his brother Sumit on 18.2.1999. The complainant was pressurized to give certain ornaments and clothes at the time of marriage of brother of petitioner No.1. However, the petitioner No.1 declined to take the complainant to America and therefore, she was forced to leave the matrimonial home and came to her parental house at Bikaner. In para 15 of the complaint, it has been specifically alleged that in December 2001, the petitioners No. 2,3 and 4 quarrelled with the complainant and ultimately the complainant was turned out from her matrimonial home and thereby she came to Bikaner and started living with her parents. Certain averments regarding the petitioner No.1 filing a divorce petition in the District Court as also complainant filing a petition seeking monthly allowance of maintenance under Section 125 Cr.P.C. have been made which are not relevant to determine the issue. However, it has been averred that the petitioner No.4 along with her parents petitioners No. 2 and 3, started subjecting the complainant to

cruelty and harassment and ultimately on 15.6.2002 she was sent to Bikaner, her Stridhan as also the Passport have not been returned to her and as such have been misappropriated by the petitioners No. 2,3 and 4.

In Rishi Anand and another Vs. Govt. of NCT of Delhi and others (supra) Hon'ble Supreme Court held that there were no allegations, much less of specific nature even to remotely connect the first appellant with the alleged offence under Section 406. It is not the case of the informant that any of her articles were entrusted to him at the time of marriage. There is no dispute that he went back to U.S.A. after a brief stay immediately after the marriage. The alleged act of beating the complainant, which took place beyond the territory of India, even if assumed to be correct, does not make out a case to proceed against the first appellant for an offence under Section 406 IPC. The High Court, in exercise of its jurisdiction under Section 482 Cr.P.C. ought to have quashed the criminal proceedings against the 1st appellant.

Keeping in view the decision of the Hon'ble Supreme Court in Rishi Anand and another Vs. Govt. of NCT of Delhi and others (supra) and the facts averred in the first information report, in my view, so far as the petitioner No.1 is concerned, there is no entrustment of any Stridhan of the complainant to him and therefore, the offence under Section 406 IPC against

the petitioner No.1 has not been disclosed in the FIR. So far as offence under Section 498-A is concerned, the averment made in the complaint clearly goes to show that she was subjected to cruelty and harassment at America, at any rate, not in India, and therefore, so far as petitioner No.1 is concerned, in my view, prima-facie offence under Section 406 IPC is not made out and offence under Section 498-A IPC has not been committed within India and therefore, proceedings against petitioner No.1 cannot be sustained and is liable to be quashed.

So far as the contention raised by learned counsel for the petitioners that the petitioner No.4 on 15.6.2002 appeared in some examination in the college noticed above, it is a plea of alibi which cannot be considered at this stage, even the documents on which learned counsel relies, genuineness of which is also has to be established in evidence.

It is settled law that even up to the stage of taking cognizance, the Court is not obliged to hear the accused and even for the purpose of framing of the charge, what is required is that the accused should be heard and not that any documents filed by the accused should be considered as has been held by Hon'ble Supreme Court in State of Orissa Vs. Debenedra Nath Padhi, JT 2004 (10) SC 303 and therefore, the contention raised by learned counsel for the petitioners with regard to petitioner No.4 cannot be accepted.

Keeping in view the averments in the FIR more particularly against petitioners No. 2,3, and 4, in my view, the offences as alleged against these three petitioners are made out and therefore, it is not fit case warranting quashing of FIR qua these three petitioners.

In the result, the criminal misc. petition is partly allowed. The FIR No. 55/2002 dated 25.9.2002 for the offences under Sections 498-A, 406 and 120-B IPC qua petitioner No.1 Amit Kumar is quashed. However, criminal misc. petition filed by petitioners No. 2,3 and 4 stands dismissed.

(H.R.PANWAR),J.

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